

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket HWCA <u>01/02-6003</u>
One Earth Environmental, Inc.)	CONSENT ORDER
1551 Lana Way)	
Hollister, California 95023)	Health and Safety Code
)	Section 25187
ID No. CAR000003707)	
Respondent.)	
_____)	

The State Department of Toxic Substances Control (Department) and One Earth Environmental, Incorporated, a California Corporation (Respondent) enter into this Consent Order and agree as follows:

1. Respondent handled hazardous waste at 800 Bolsa Road, Hollister, California (Site).

2. The Department became aware of the Site on April 12, 2000.

3. The Department alleges the following violations:

3.1. The Respondent violated Health and Safety Code section 25201(a) and California Code of Regulations, title 22, section 66263.18 in that on or about March 22, 2000, Respondent stored hazardous waste at Respondent's site, located at 800 Bolsa Road, Hollister, California. Respondent did not hold a hazardous waste facilities permit or other grant of authorization from the Department to use and operate the site. To wit: on or about March 22, 2000, Respondent stored flammable liquid (benzene) rinseate at Respondent's site. The flammable liquid (benzene) rinseate was transported, on Uniform Hazardous Waste Manifest number 99385070, to a facility that holds a hazardous waste permit or other grant of authorization from the Department on

April 14, 2000. Respondent did not meet the requirements of the transfer facility exemption, as required in California Code of Regulations, title 22, section 66263.18 in that Respondent held hazardous waste for over 10 days. Additionally, the packages of containers used in the transfer of the flammable liquid (benzene) rinseate from Seaport Environmental to Respondent's facility on or about March 22, 2000 were not the same packages or containers used for transporting the flammable liquid (benzene) rinseate from Respondent's facility to Pacific Resource Recovery Services, a facility that held a hazardous waste facilities permit or other grant of authorization from the Department. Additional handling of the flammable liquid (benzene) rinseate took place at Respondent's facility, which is also prohibited under this section.

3.2. Respondent violated California Code of Regulations, title 22, section 66263.20(d) in that on or about March 22, 2000, Respondent did not have a manifest in Respondent's possession while transporting hazardous waste. To wit: on or about March 21, 2000, Respondent transported, via tanker truck, approximately 600 gallons of underground fuel tank rinseate (rinseate) to Seaport Environmental, a Class D disposal facility. On or about March 22, 2000, the rinseate was tested by Seaport Environmental and found to exhibit the characteristic of ignitability, as defined in California Code of Regulations, title 22, section 66261.21. The rinseate had a flashpoint less than 60 degrees Centigrade (140 degrees Fahrenheit). Seaport Environmental rejected the rinseate because it exhibited the characteristic of ignitability. On or about March 22, 2000, Respondent transported the rinseate, a hazardous waste, without a manifest in Respondent's possession, from Seaport Environmental to Respondent's site, located at 800 Bolsa Road, Hollister, California.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent does not admit the violations alleged above, except as follows: Respondent admits the facts alleged above for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the date the violation occurred.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Ms. Astrid L. Johnson, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, California 93611

Mr. Robert Shingai, Director
Environmental Health Services
San Benito County Health Department
1111 San Felipe Road, Suite 101
Hollister, California 95023

Ms. Charlene Williams, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Bldg. F., Suite 200
Berkeley, California 94710

10.2. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.3. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.4. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.5. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.6. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of

past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to

take further actions as are necessary to protect public health or welfare or the environment.

10.7. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.8. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities

under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.9. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.10. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.11. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.12. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of

\$3,200. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment

Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Ms. Astrid L. Johnson, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, California 93611

To: Ms. Charlene Williams, Chief
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Bldg. F., Suite 200
Berkeley, California 94710

To: Mr. Mike Shepard
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to HSC § 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have

responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: 3/20/02

(Original Signed by Ruben Chavez)
Signature of Respondent's Representative

Dated: 3/20/02

(Original signed by Ruben Chavez)
Typed or Printed Name and Title of
Respondent's Representative

Dated: 3/25/02

(Original signed by Astrid Johnson)
Astrid L. Johnso, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control